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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,966	10/24/2006	Michael Kollender	095309.56922US	9955

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CROWELL & MORING LLP  
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EXAMINER
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KNIGHT, DEREK DOUGLAS

ART UNIT	PAPER NUMBER
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3655

MAIL DATE	DELIVERY MODE
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06/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,966	<b>Applicant(s)</b> KOLLENDER ET AL.	
	<b>Examiner</b> DEREK D. KNIGHT	<b>Art Unit</b> 3655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/19/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The foreign references that are crossed out on the IDS were not considered because a translated copy was not supplied with applicant's submission of the IDS.

### ***Claim Objections***

The claims are objected to because they include reference characters which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13, 14, 16, 18, 27, 28 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 13 and 27 recite "a desired profile of a clutch position", there is insufficient description in the specification as to the applicant's definition of "a desired profile of a clutch position". Applicant discloses the "desired clutch profile" being used to determine the triggering moment and also discloses the "desired clutch profile" being capable of having different gradients (page 5 of specification), however, there is no clear definition of the a desired profile of the clutch position. For the purposes of examination examiner will assume applicant is referring to the position of the clutch along its path of travel from engagement to disengagement and back again.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 12,13, 15, etc.: It is unclear to the examiner if "the clutch" recited in line 3 of, claim 12, and then again throughout the remainder of the claims, is synonymous with "[the] automated clutch" disclosed in line 2, of claim 12. For the purposes of examination, the Examiner will assume applicant is referring to "[the] automated clutch" recited in line 2, of claim 12.

Regarding claims 13, 14, 16, 18, 27, 28 and 30: The "desired profile of a clutch position" is not clearly defined in the specification. For the purposes of examination examiner will assume applicant is referring to the position of the clutch along its path of travel from engagement to disengagement and back again.

Claim 29 recites the limitation "the gripping point" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recites the limitation "the safety period" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recites the limitation "the gripping point" in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **12, 13, 21, 22, 25-27**, rejected under 35 U.S.C. 102 (b) as being anticipated by **REIK et al. (US 6,230,862)**.

Regarding **claims 12 and 26**, REIK discloses in Fig. 10, a control device and a method for operating a drive train of a motor vehicle with an automated gearwheel change gearbox (402), an automated clutch (403), and a control device (not shown) for controlling the gearwheel change gearbox and the clutch, the clutch being opened when shifting takes place (col. 17, lines 12-13) from an original gear to a target gear of the gearwheel change gearbox, comprising triggering the automated clutch for closing (initiation of the shift causes the motor (450) to spin, and because the motor controls both the clutch engagement and the shifting, the triggering of the shift is also the triggering of the closing of the clutch) before the target gear is fully engaged, and

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determining a triggering moment for the automated clutch as a function of at least one of operational parameters and state variables of the drive train (such as the desire to shift).

Regarding **claims 13 and 27**, as best understood by the examiner, REIK discloses the triggering moment is determined as a function of a desired profile of a clutch position during closing of the clutch.

Regarding **claim 21**, as best understood by the examiner, REIK discloses comparing the clutch position with progress of the engagement of the target gear during closing of the clutch and, depending on a result of the comparing changing the desired profile of the clutch position (this occurs when a multiple-step shift is requested, see col. 17, lines 21-32).

Regarding **claim 22**, as best understood by the examiner, REIK discloses opening the clutch after breaking off the closing of the clutch and again beginning to close the clutch only after the target gear is fully engaged (see col. 17, lines 16-18).

Regarding **claim 25**, as best understood by the examiner, REIK discloses the desired profile of the clutch position is changed as a function of said comparison.

### ***Allowable Subject Matter***

Claims 15, 17, 19, 20, 23, 24, 29, and 31 - 35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEREK D. KNIGHT whose telephone number is (571)272-7951. The examiner can normally be reached on Mon - Friday, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on (571) 272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. D. K./  
Examiner, Art Unit 3655

/CHARLES A. MARMOR/  
Supervisory Patent Examiner, Art  
Unit 3655